IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

MARY SHORT, Individually and as Administratrix of the Estate of THOMAS L. SHORT,	)	**Civil Action No.: 5:04cv00043**
Plaintiff,	)	
v.	)	**MEMORANDUM OPINION**
SHERIFF DANIEL T. McEATHRON, et al.,	)	**By: Samuel G. Wilson**
	)	**United States District Judge**
Defendants.	)	

Mary Short, individually and as representative of the estate of her husband, Thomas Lee Short, filed this § 1983 action following her husband's suicide while he was a detainee at the Warren County Jail. She alleges that defendants, seven deputy sheriffs assigned to the Warren County Jail, were deliberately indifferent to the risk of suicide.[1] The defendants have moved for summary judgment based on qualified immunity. The court finds that the evidence creates triable issues of fact as to whether five of the deputies, William Smoot, Troy Oakes, Michael Beatty, George Lewis, and Harry Ferguson, acted with deliberate indifference to a substantial risk of harm and they are therefore not entitled to immunity from suit. However, the court finds no genuine issue of material fact as to two other deputies, Kurt Kensy and Jeremy Seal, concludes that they are immune from suit, and grants their motion for summary judgment.

I.

The unfortunate circumstances giving rise to this case began on January 8, 2004, when Thomas

[1]This court dismissed Sheriff McEathron as a defendant, pursuant to the parties' stipulation, on November 11, 2004.

Lee Short was arrested and jailed for assault and battery of his wife, in violation of a September 2003 protective order that prohibited Mr. Short from having any contact with her, from committing acts of family abuse, and from drinking alcoholic beverages. After his release on January 11, 2004, Short went to the Blue Ridge Motel in Front Royal, Virginia, and began drinking heavily. Around 9:30 p.m., Short called his wife, Mary Short, and told her that he was planning to kill himself. Mrs. Short, concerned that her husband would carry out his threat, called the Warren County Sheriff's office to request that they check the local bridges. That office advised her to call the Front Royal Town Police, which she did.

Soon after calling his wife, Mr. Short also called his daughter, Linda Good, to tell her that he "wanted to die," and to ask if she could come pick him up. When she arrived at the motel, Good found her father so drunk that she decided it would be better to let him sleep and return the next morning. Mr. Short called his wife again at 4:30 a.m. and repeated his threat to kill himself. He also called his daughter, who told him she would pick him up at noon the next day.

Before she returned to the hotel, Good spoke with Mrs. Short, and they decided to have Mr. Short arrested again for violating the September 2003 protective order, believing that this course of action would keep him from harming himself. Mrs. Short went to the Magistrate's Office to file a criminal complaint and the Magistrate issued a warrant for Mr. Short's arrest. The Magistrate then contacted the Front Royal Town Police and told the officer that Mr. Short was "basically a drunk," that he was intoxicated, and that he had called his wife threatening to kill himself. The officer, Sergeant Clint Keller, went to the Short residence, arrested Mr. Short, and transported him to the Warren County Jail.

Sergeant Keller took Mr. Short before the Magistrate, who issued an order remanding Mr. Short to custody until he could appear in Warren County General District Court the next day. Sergeant Keller then turned Mr. Short over to the deputies on duty at the jail. Defendants Smoot, Beatty, Oakes, and Lewis[2] were in the jail's monitor room, where Sergeant Keller advised them that Mr. Short had been arrested for violation of a protective order, that he was drunk, and that he had been calling his wife threatening to kill himself.[3]

The Warren County Jail Policy and Procedures manual, in effect on January 12, 2004, addressed proper treatment of potentially suicidal inmates. The manual required custodial officers to remove all potential tools such as sheets, blankets, and shoelaces, to conduct inmate checks at random intervals, at least twice per hour, and to make reports of any unusual occurrences. The defendant deputies also received training in treatment of potentially suicidal inmates. If the deputies were aware that the inmate was suicidal, they were instructed to remove his clothing, place him in a suicide "smock," call mental health services, and conduct checks at fifteen-minute intervals.

When an intoxicated inmate was brought to the jail, deputies would attempt to process him. If the inmate was unable to give a medical history, then the typical practice was to place the intoxicated

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[2] Although Sergeant Keller claimed that defendant Deputy Lewis was not in the monitor room at the time he made this statement, Deputy Lewis admitted that he was in the monitor room with the other deputies when Sergeant Keller passed on the information about Short.

[3]There remain discrepancies in the defendants' deposition testimony regarding exactly what Sergeant Keller told them. Several deputies asked Sergeant Keller whether Short had been arrested for public intoxication, to which they claim he responded that Short had been brought in for violation of a protective order. Keller, however, stated that he also told the deputies in the monitor room that Short had threatened to kill himself, albeit in a casual manner, such that the deputies may not have picked up on it.

inmate in the jail's sick cell, separate from the general population, to sober up, and also to remove all items that could be used for "self-destructive purposes."

Despite Sergeant Keller's statement that Short had threatened to kill himself, the deputies never removed Short's clothing and shoelaces or called for a mental health evaluation. Sergeant Smoot took him from the booking area to the bathroom and then to the sick cell, where he removed Short's belt.[4] Several hours later, Smoot heard banging coming from the sick room.[5] He asked Short if he was all right, and Short responded that he was fine. He did not apprise the other deputies of the disturbance, nor did he make a report of an unusual occurrence. Deputy Lewis checked on Short twice, at approximately 5:30 and 6:30 p.m.; both times Short was lying in bed with a sheet over him and appeared to be asleep. Deputy Oakes also checked on Short around 5:00 p.m., and observed that he was asleep.

Sergeant Smoot and Deputies Lewis, Oakes, and Beatty's shifts ended at 7:00 p.m. and defendants Deputies Ferguson, Kensy, and Seal arrived. No one in the departing shift informed the incoming deputies that Short had threatened to kill himself; the incoming deputies were only aware that an intoxicated detainee had been brought in and placed in the sick room.

The Warren County Jail used surveillance cameras to monitor inmate activity. There were a number of twelve-inch television screens that displayed images from these cameras in the jail's monitor room. During the evening shift, Deputy Ferguson, the officer-in-charge, was in the monitor room from

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[4]Sergeant Smoot stated that his practice was to remove intoxicated inmates' belts out of concern for the safety of the other deputies.

[5]The noise was apparently caused by Mr. Short banging his shoes against the sink.

approximately 7:00 to 8:30 p.m, and was responsible for observing monitors as well as answering the telephone and admitting any visitors. He acknowledged that he was aware that an inmate was in the sick cell on the evening of January 12, 2004, and that he observed the monitor showing activity in the sick cell. He left the monitor room for a short time at approximately 8:24 p.m. to respond to an inmate waving a towel at the camera. Deputy Seal was not working in the monitor room. He made rounds of the cells at approximately 7:15 p.m., and again between 8:00 and 8:30 p.m. Seal did not check on the sick cell where Short was housed, believing that it was unoccupied. Deputy Kensy was in the jail records room filing from 7:00 to 8:30 p.m.. He passed through the monitor room for a few minutes, but was not present at the jail between 8:35 and 9:00.

The court has reviewed the videotape taken from the surveillance camera that recorded Short's activity in the sick room on January 12, 2004. Between approximately 7:00 and 7:30 p.m., Short removed the laces from his shoes, tied them together, and climbed from his bed to the bars of his cell**.** He tied the shoelaces to the bars and tested their strength. He then tied the laces around his neck. Short repeated this process a number of times, alternating between climbing on the bars and sitting on his bed for several minutes at a time. At approximately 7:36 p.m., Short again climbed from his bed to the bars of his cell, placed the noose around his neck, and hung himself. It was not until approximately 9:00 p.m., when Deputy Seal escorted a new detainee to the sick room, that the deputies discovered Short's body.

II.

The defendants have moved for summary judgment, claiming that there is no genuine issue of material fact and that they are entitled to qualified immunity as a matter of law. In a § 1983 action,

defendants are entitled to immunity from suit unless there is evidence from which a reasonable jury could determine that they were deliberately indifferent to a substantial risk of serious harm. Saucier v. Katz, 533 U.S. 194, 200 (2001).

To determine whether a defendant is entitled to qualified immunity, the court must undertake a two-step inquiry: first, the court must determine whether, taken in the light most favorable to the plaintiff, the facts alleged show a violation of a constitutional right; second, if the facts establish a constitutional violation, then the court must determine whether the right was "clearly established" at the time of the alleged offense such that it would have been clear to a "reasonable officer" that his conduct "was unlawful in the situation." Parrish v. Cleveland, 372 F.3d 294, 301 (4th Cir. 2004) (citing Clem v. Corbeau, 284 F.3d 543, 549 (4th Cir. 2002)). If it was not clear to the defendant that his conduct was unlawful, then the law affords him immunity from suit. Id. at 302.

Turning to the first step of the court's inquiry, the plaintiff has alleged that the defendants violated Short's Fourteenth Amendment due process rights by their deliberate indifference to a substantial risk of suicide. To establish a Fourteenth Amendment violation as to each defendant, the plaintiff must show that the defendant in question "actually knew of and disregarded a substantial risk of serious injury to the [pretrial] detainee." Young v. City of Mount Ranier, 238 F.3d 567, 575-76 (4th Cir. 2001). First, the evidence must show that the individual defendant was *subjectively* aware of a substantial risk of harm. "It is not enough that the officers *should have* recognized it; they actually must have perceived the risk." Parrish, 372 F.3d at 303 (citing Rich v. Bruce, 129 F.3d 336, 340 n.2 (4th Cir. 1997) (emphasis in original)). Second, the evidence must show that the defendant "subjectively recognized that his actions were 'inappropriate in light of that risk.'" Id. This element also requires that

the defendant actually recognize that his actions were insufficient.

Actual knowledge "is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." Farmer v. Brennan, 511 U.S. 825, 842 (1994). Therefore, "a factfinder may conclude that [a defendant] knew of a substantial risk from the very fact that the risk was obvious." Id. However, the Fourth Circuit has noted that "the risk of injury must be 'so obvious that the factfinder could conclude that the [officer] did know of it because he could not have failed to know of it.'" Parrish, 372 F.3d at 303 (quoting Brice v. Va. Beach Corr. Ctr., 58 F.3d 101, 105 (4th Cir. 1995)). As to the second element, "a factfinder may conclude that the official's response to a perceived risk was so patently inadequate as to justify an inference that the official actually recognized that his response to the risk was inappropriate under the circumstances." Id.

A. First-Shift Officers: Smoot, Beatty, Oakes, and Lewis

Viewing the evidence in the light most favorable to the plaintiff, a reasonable jury could find that Sergeant Smoot, and Deputies Beatty, Oakes, and Lewis each knew that Short was suicidal. According to his deposition testimony, when Sergeant Keller turned over custody of Short, he informed the officers in the monitor room that Short was intoxicated, had violated a protective order, and had been calling his wife threatening to kill himself. Smoot, Beatty, Oakes, and Lewis were present in the monitor room. Keller noted that his statement may not have "clicked" with the officers and the deputies gave conflicting deposition testimony regarding what they heard.[6] Nevertheless, the evidence is

[6]Sergeant Smoot testified that Sergeant Keller told him he had brought in a "drunk in public," but that Keller might have said something else. Deputy Lewis also testified that he asked Keller if Short was a "drunk in public," and that Keller responded that Short had violated a protective order. Deputy Beatty testified that Keller told him that Short was intoxicated.

sufficient for a reasonable jury to find that Keller communicated the threat to them and to infer that the officers were each actually aware that Short was suicidal. See Odom v. South Carolina Dept. of Corr., 349 F.3d 765, 771 (4th Cir. 2003) (finding subjective knowledge where officers had been explicitly warned about the risk to the plaintiff); See also Gordon v. Kidd, 971 F. 2d 1087, 1095 (4th Cir. 1992) (concluding that intake officer was aware that detainee was suicidal because arresting officer had communicated information concerning detainee's suicide threats).

The second step of the deliberate indifference analysis requires a determination of whether, viewing the evidence in the light most favorable to the plaintiff, a reasonable jury could find that the defendants' response to the known risk was reasonable. In order to be held liable for deliberate indifference, the defendants must be "more than merely negligent." Daniels v. Williams, 474 U.S. 327, 333 (1986); See also Parrish, 372 F.3d at 307 ("Where the evidence shows, at most, that an officer's response to a perceived substantial risk was unreasonable under the circumstances, a claim of deliberate indifference cannot succeed"). Deliberate indifference requires a showing that the officer in question "responded to a perceived risk with subjective awareness that the response was inappropriate." Parrish, 372 F. 3d at 307.

The plaintiff alleges that Sergeant Smoot and Deputies Beatty, Oakes, and Lewis did not respond reasonably to the known risk because they did not follow appropriate jail protocol for potentially suicidal inmates. Indeed, upon learning of Short's threats, no one conducted a mental health inquiry or completed a medical history screening questionnaire,[7] nor did anyone seek medical

[7]Because Short was intoxicated, he was not booked pursuant to ordinary jail procedure.

assistance. None of the officials removed Short's shoes, blankets, sheets, or shoestrings. However, the failure to take precautionary measures which, in hindsight, could have prevented the injury, is not necessarily probative of deliberate indifference. "The question in deliberate indifference cases is not whether the officials could have taken *additional* precautions." Parrish, 372 F.3d at 309 (emphasis added). In Parrish, the plaintiff argued that the defendants, who attempted to mitigate the risk of harm to the detainee, should have taken additional measures. Id. at 308. The Fourth Circuit cautioned against examining the defendant's actions with "20/20 hindsight," finding that "the evidence show[ed] that the officers [had taken] precautions that they believed (albeit erroneously) were sufficient to prevent the harm that befell [the detainee]." Id. at 309.

In contrast to Parrish, here, taking the facts in the light most favorable to the plaintiff, the deputies were aware of a risk that Short would attempt suicide and not only failed to follow jail procedure, but also failed to take the simple precaution of warning the next shift that Short was at risk. Here, in the light most favorable to the plaintiff, the deputies did not take "less action than they could have," rather, they did virtually nothing. Brown v. Harris, 240 F.3d 383, 391 (4th Cir. 2001); see also Lewis v. Richards, 107 F.3d 549, 553 (7th Cir. 1997) (stating that summary judgment would be inappropriate under deliberate indifference standard if the defendants had simply refused to do anything in response to a known risk).[8] Based on this evidence, a jury could draw the inference that Sergeant Smoot and Deputies Beatty, Oakes, and Lewis acted with deliberate indifference.

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[8]The evidence shows that Oakes checked on Short at approximately 5:00p.m., and Lewis checked on him at approximately 5:30 and 6:30 p.m., in accordance with their usual required rounds of the jail. The court finds, however, that a jury could conclude that compliance with ordinary jail duties does not necessarily demonstrate a reasonable response to a known suicide risk.

B. Second Shift Officers: Ferguson, Kensy, and Seal

As to Deputies Ferguson, Kensy, and Seal, the court finds that there is not sufficient evidence for a jury to find that Kensy and Seal acted with deliberate indifference. The first-shift deputies admit that they did not inform the incoming second-shift deputies that Short had threatened suicide. Although Deputies Ferguson, Kensy, and Seal were not explicitly warned of the risk, viewing the evidence in the light most favorable to the plaintiff, a reasonable jury could attribute knowledge of risk to the shift commander, Deputy Ferguson. Knowledge may be inferred from circumstantial evidence. Farmer, 511 U.S. at 841. Here, a surveillance camera monitored Short while he was in the sick cell. His activities were visible in the jail's monitor room, and Deputy Ferguson was responsible for watching the monitors.[9] The video shows Short removing the laces from his shoes and, over a period of twenty to thirty minutes, climbing on the bars of his cell, tying his shoelaces to the bar, placing a noose around his neck, and testing the weight of the rope. Short climbed on the bars at least three separate times before hanging himself, sitting back down on the bed for several minutes in between each attempt. A jury could conclude that the risk of suicide was so obvious as to justify an inference of knowledge, and that Ferguson was therefore aware of a substantial risk of harm.[10]

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[9]Deputy Ferguson testified in his deposition that he was assigned to the monitor room on the evening of January 12, 2004, and that his primary responsibilities were to watch the monitor screens, answer the phone, and admit visitors to the jail. He indicated that he did not leave the monitor room between 7:00 p.m. and 9:00 p.m., except at approximately 8:24 p.m., he checked on some inmates who were waving at the cameras. He also stated that he was aware that there was an inmate in the sick room, and that he looked at the sick room monitor.

[10]The court does not intimate from its conclusion that Ferguson actually observed Short's actions on the monitor. Indeed, the court would find it shocking, given the obvious implication of Short's actions, if Ferguson in fact observed him and did not respond. However, whether Ferguson actually observed that which was plainly observable is a question of fact for the jury, not the court.

Further, the evidence, viewed in the light most favorable to the plaintiff, is also sufficient for a jury to find that Ferguson did not respond reasonably to a known risk of harm. Like the first-shift deputies, Ferguson took no action to address the risk of suicide. Deliberate indifference includes "apathy or unconcern." Gordon, 971 F.2d at 1095. Taken in the light most favorable to the plaintiff, the fact that Ferguson failed to respond in any manner to Short climbing on the bars of his cell and tying a noose from his shoelaces is sufficient evidence for a reasonable jury to find that Ferguson acted with deliberate indifference. See id.

In contrast, the uncontradicted evidence, even when viewed in the light most favorable to the plaintiff, is not sufficient to attribute knowledge of a substantial risk of harm to either Deputy Seal or Deputy Kensy. Neither deputy was explicitly warned that Short had threatened to commit suicide. Neither deputy was present in the monitor room for a sustained period of time during the evening, and neither had any contact with Short in his cell.[11] Both Kensy and Seal testified that they did not observe Short at any time before his death. The plaintiff has not produced evidence from which a finder of fact could draw the contradictory inference that either Kensy or Seal observed Short's actions on the monitors. Based on the evidence before the court, no reasonable jury could find that Kensy or Seal were aware of a substantial risk of harm. Summary judgment in favor of Kensy and Seal is therefore appropriate. Both deputies are immune from suit because there is no evidence from which a jury could conclude that either was deliberately indifferent to a substantial risk of harm.

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[11]Deputy Kensy testified in his deposition that he was in the jail's filing room until he left the jail at approximately 8:30 p.m. He was in the monitor room for "a few moments" between 7:00 p.m. and 8:30 p.m. Deputy Seal was working in other parts of the jail.

III.

For the reasons stated, the court grants the motion for summary judgment of Deputies Kensy and Seal and denies the motion for summary judgment of Sergeant Smoot and Deputies Oakes, Beatty, Lewis, and Ferguson.

ENTER: This _____ day of March, 2005.

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UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

MARY SHORT, Individually and as Administratrix of the Estate of THOMAS L. SHORT,	)	**Civil Action No.: 5:04cv00043**
Plaintiff,	)	
v.	)	**ORDER**
SHERIFF DANIEL T. McEATHRON, et al.,	)	**By: Samuel G. Wilson United States District Judge**
Defendants.	)	

In accordance with the Memorandum Opinion entered on this day, it is hereby **ORDERED** and **ADJUDGED** that Sergeant Smoot and Deputies Oakes, Beatty, Lewis, and Ferguson's motion for summary judgment is **DENIED** and Deputies Kensy and Seal's motion for summary judgment is **GRANTED**.

ENTER: This _____ day of March, 2005.

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UNITED STATES DISTRICT JUDGE